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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,329	02/08/2001	Philip C. Gevas	ACG2AUSA	4824

7590

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EXAMINER

BORIN, MICHAEL L

ART UNIT

PAPER NUMBER

1631

DATE MAILED: 12/17/2001

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/700,329**

Applicant(s)  
**Gevas et al.**

Examiner  
**Michael Borin**

Art Unit  
**1631**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7 and 15-43 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claims 7 and 15-43 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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### **Part III DETAILED ACTION**

Claims 7, 15-43 are currently pending.

#### **Restriction Requirement**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claim 7, as drawn to method for treating tumor using immunogenic agent, classified in class 424, subclass 185.1.
- II. Claim 7, as drawn to method for treating tumor using antibodies, classified in class 424, subclass 130.1.
- III. Claims 15-18,24-29, as drawn to method for treating hypergastinemia using immunogenic agent, classified in class 424, subclass 185.1.
- IV. Claims 15,19-29, as drawn to method for treating hypergastinemia using antibodies, classified in class 424, subclass 130.1.
- V. Claims 30-34,39-43, as drawn to method for reducing effect of anti-ulcer using immunogenic agent, classified in class 424, subclass 185.1.
- VI. Claims 30,35-43, as drawn to method for reducing effect of anti-ulcer using antibodies, classified in class 424, subclass 130.1.

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The inventions are distinct, each from the other because of the following reasons:

Groups I-II, III-IV and V-VI are to methods of treatment of patentably distinct disorder conditions and are patentably distinct because the disorder conditions are not directly related to each other, have different mechanisms of development and etiology, and the methods of treatment have different enablement requirements. The groups require different literature search and a reference teaching treatment of one disorder (e.g., reducing side effect of anti-ulcer medications) will not teach treatment of any other disorder (e.g., treatment of cancer).

Groups I,III, V and groups II, IV, VI are drawn to methods of use of different agents, peptides and antibodies, which are structurally and biochemically different and require differing methods and areas of search which would impose an undue burden upon the examiner.

Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their recognized divergent subject matter and/or different classification, because the patent and/or sequence or structure search required for different groups is different, and/or their necessity for non-

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coextensive literature searches, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(h).

#### **Species Requirement**

Election of species should be required prior to a search on the merits in all applications containing both species claims and generic or Markush claims.(MPEP 808.01(a))

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The claims of Groups I,III,IV are individually or dependently directed to a plurality of disclosed patentably distinct species of anti-gastrin immunogens, such as SEQ ID No. 1, SEQ ID No. 2, or a conjugate thereof (see, e.g., claim 17).

The claims of Groups II, IV, VI are individually or dependently directed to a plurality of disclosed patentably distinct species of antibodies, such as those disclosed in claims 19-23 or claims 35, 38.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for an elected Group, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

To be complete, a response to the election of species requirement should include a proper election along with a listing of all claims readable thereon, including any claims subsequently added. MPEP 809.02(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Borin whose telephone number is (703)

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305-4506. Dr. Borin can normally be reached between the hours of 8:30 A.M. to 5:00 P.M. EST Monday to Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Mr. Michael Woodward, can be reached at (703) 308-4028. The fax telephone number for this group is (703) 305-3014.

Any inquiry of a general nature or relating the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

December 14, 2001

mlb

**MICHAEL BORIN, PH.D**  
**PRIMARY EXAMINER**

